

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3328 of 1997

with

SPECIAL CIVIL APPLICATION No 5556 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJARAT RAJYA PRATHMIK

SHIKSHAK SANGH

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 3328 of 1997  
MR KB PUJARA for Petitioner  
SERVED BY DS for Respondent No. 1, 2
2. Special Civil ApplicationNo 5556 of 1993  
MR KB PUJARA for Petitioner  
SERVED BY DS for Respondent No. 1, 2

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 20/06/97

These two petitions are filed in a sequence as in the year 1992 the State Government issued a G.R. through the Section Officer, Education Department that the Administrative Officer shall exercise his power of transfer under Sec.24(1) of the Bombay Primary Education Act, 1947 in consultation with a Committee constituted thereunder. This G.R. is dated 30th July 1992, Annexure F, page 51 of Special Civil Application No.3328 of 1997. That G.R. is the subject matter of challenge in the earlier petition No.5556 of 1993. Thereafter, the State Government came out with circular dated 13-2-1997 issued by the Deputy Secretary, Education Department, whereby instructions are to the effect that the Administrative Officer, who is the only authority under the said Act to make transfer orders of primary teachers, shall do so after taking in confidence the members of the Committee as set out in the said circular.

2. This is not the first exercise of this kind indulged into either by the Director of Primary Education or by the State Government. As noted above, in the year 1992 the State Government has already done it once which is the subject matter of earlier petition of 1993 and the subsequent action of 1997 which is the subject matter of 1997 petition. This exercise was preceded by an exercise of power under Sec.24(1) of the said Act by the Director of Primary Education when he issued a circular dated 21-6-1974 which came to be decided on 1-9-1977.

3. All along, the view taken by this Court in respect of the so-called powers either of the Director of Primary Education or by the State Government is that the powers so set out in the said Primary Education Act is of a general nature and therefore, when in exercise of this statutory power, an attempt is made either through G.R. or by a circular, issues specific direction in respect of a subject like transfer, it is excessive exercise of power not contemplated by the Act.

4. There is a decision in the case of Laxmangiri Shivgiri Gosai and Anor. vs. State of Gujarat (reported in 19n GLR 747) under Sec.54 of the said Primary Education Act dealing with a direction issued by the State Government in connection with a particular District School Board namely that of Baroda District. When the directions issued under Sec.54 were found to be in relation to a particular instance of transfer, no doubt, involving more than one teacher, it was found by a

learned Judge of this Court to be excessive use of power not contemplated by Sec.54 of the said Primary Education Act. The State Government either through the Director or by itself seems to be fascinated by the subject of transfer and therefore, periodically keeps on issuing instructions in purported exercise of Sec.24(1) when the Director issues it or Sec.54 of the said Act when the State Government issues it. There are instances where even Sections are not mentioned but directions are issued by either of these authorities. Looking to the authority that has issued the direction, the case may have to be argued with reference to either Sec.24(1) or Sec.54 as it happens in the instant case.

5. The impugned circular in SCA No.3328 of 1997 does not refer to any particular Section. However, as it is issued by the State Government, it could have been done only under Sec.54, when the subject matter is that of primary education. If this be the submission of the respondent State it has to be taken as an argument of desperation because power under Sec.54 can be exercised only in respect of District School Board and not in relation to Administrative Officer. This position becomes clear when Sec.54 of the said Act is read. Sec.54 reads as under:

"Directions by State Government: Notwithstanding anything contained in this Act, the State Government shall have power to give to a district school board all such directions as it may consider necessary in regard to any matter connected with primary education and the district school board shall comply with such directions."

A mere reading of the said Section makes it very clear that the power vested in the State Government by the legislature through this enactment is obviously of a general nature where norms can be laid and policy can be evolved. Primary Education is a constitutional mandate and otherwise also the resources of the State namely human beings, when they are to be developed the education begins at primary level and therefore, a particular thrust to the education that may have to be given, can be subject matter of a policy and the direction that the said education takes can certainly be taken care of by establishing certain norms and policy. The concept of District School Board is very clear as set out in the said Act under Chapter III. The power itself of the said School Board is to be found in Sec.30 more particularly sub-Section 2. It is in connection with these powers and duties of the Board that Sec.54 power of the State of

issuing directions can well be understood and once this is done, it is obvious that the directions if at all can be issued by the State Government under Sec.54 and that too, to the District School Board, it could be in relation to those subjects as set out in sub-sec.2. Arguably, it can be said that these are not exhaustive subjects and therefore, it may be treated as illustrative. As this is not a matter required to be decided here, I do not come out with a definite pronouncement whether the list is exhaustive or merely illustrative for the exercise of power of the State Government under Sec.54. However, one thing becomes clear that the power of the State Government under Sec.54 is only restricted to the District School Board. The Administrative Officer who is a distinct entity under the State Board is not at all covered by Sec.54 and particularly provision of Sec.13 of the Act. For understanding what is Administrative Officer, one has to turn to Chapter V Sec.20 onwards. Section 21 says that for every School Board, there shall be an Administrative Officer and he shall be the Chief Executive Officer of the Board. By prescribing his powers separately under the Rules the remaining part of Sec.21 has been carried out. Thereafter, power of the Administrative Officer over school board staff is taken care of by Sec.24, the relevant part of which reads as under:

24(1): The Administrative Officer shall have power, subject to such general instructions as may be issued from time to time by the Director, to promote, transfer and take all disciplinary action (including removal or dismissal) against the staff maintained under Sec.20.

Rest of the provisions are not quoted because they relate to disciplinary part of the administration.

6. As noted above, sub-sec.(1) of Sec.24 takes care of the transfer, which is the exclusive domain of the Administrative Officer.

7. No doubt, in the latter part of sub-Sec.(1) of Sec.24, there is power reserved for the Director to issue instruction with regard to transfer, promotion and disciplinary action. As already noted above in connection with Sec.54 read with Sec.13 of the said Primary Education Act, it will be for the purpose of setting out norms and evolving policy. The impugned order of forming a committee, whose decision alone shall have to be carried out by Administrative Officer, as envisaged therein is nothing else but overstepping in the

exercise of the power on the part of the Director under Sec.24(1) and this has been held by an earlier decision of this Court rendered in the aforesaid SCA No.990 of 1997 by Justice A.D.Desai. The Director had issued instructions to the Administrative Officer on 21st June 1974 that he shall issue orders of transfer as per the decision of the transfer consisting of 4 different functionaries as set out therein. A copy of this judgment is at page 40 and the details as to the said Committee is to be found at page 42 of the paper book of SCA No.3328 of 1997.

8. In the said exhaustive, well considered and elaborate judgment, the learned Judge has noted at page 8 running page 47 that the Director of Education is given authority to issue general instructions in respect of promotion, transfer, etc. which has been construed to mean to lay down principles or guidelines as to how the Administrative Officer will exercise his power in the matter of promotion, transfer etc. The learned Judge has pointed out that the Director cannot issue special instructions with regard to promotion transfer etc. in respect of a particular individual or in a particular case. The actual power of transfer has been given by the Statute to the Administrative Officer only. This statutory power given by the legislature to the Administrative Officer cannot be interfered with by the Director of Education in face of the clear words of the Section. His doing so, would amount to an exercise in legislative enactment and therefore, the action was struck down.

9. In the instant case also similar situation is to be found with regard to the action of the Director of Primary Education when he issues the impugned direction Annexure B dated 30th July 1992 page 22 with amendment dated 1-8-1992. In the subsequent petition what is challenged is the action of the State Government in form of the impugned Circular Annexure A page 17 dated 13-2-1997.

10. Under the circumstances, I have no hesitation in holding that the action of the State in the case of the petitioner of the 2nd petition cannot be sustained. In the second petition, initially there was a G.R. followed by the circular. Both, therefore, will have to be struck down. Accordingly so far as SCA No.5556 of 1997 is concerned, the impugned G.R. of 30th July 1992 is quashed and set aside. In SCA No.3328 of 1997 circular dated 13-2-1997 is quashed and set aside. The petitioners of the respective petitions, accordingly,

succeed. Rule is made absolute with no order as to costs.

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